



WHO WILL INHERIT YOUR ESTATE

Contributor: Enid F. Chin
Attorney-at-Law

Liabilities to be discharged first

When a person dies, with or without a Will his Executor (appointed in his Will) or Administrator (person to whom the Court issues a grant of letters of administration) must first settle his/her liabilities from his assets before distribution of the residue can be made to his beneficiaries.

Examples of such liabilities are:-

- (i) a loan secured by mortgage or charge over real property belonging to the deceased;
- (ii) proven debts of unsecured creditors;
- (iii) amounts owing for statutory deductions, Income Tax, Property taxes, General Consumption Tax;
- (iv) Judgments obtained against the estate;
- (v) Probate, Funeral and Testamentary expenses;
- (vi) Government duties viz Transfer Tax payable on taxable property (eg. real estate/shares) owned by the deceased at the date of his death; Stamp duty on Probate or Letters of Administration from the Court;
- (vii) legal costs for professional services of lawyer to obtain Grant of Probate or Letters of Administration;
- (viii) any other liabilities.

Persons dying without a Will

The estate of a person who dies intestate (i.e without making a valid Will) after March 1988 is distributed to the beneficiaries named in the **Intestates' Estates and Property Charges Act** as follows:-

1. **The surviving spouse** which includes a common-law wife or common-law husband who lived and cohabited with the deceased for at least five years up to the date of death is entitled to:-
 - (a) All personal chattels;
 - (b) Ten Thousand Dollars (\$10,000.00) or a sum equal to ten per cent (10%) of the net value of the estate free of death duties and costs;
 - (c) Interest at the rate of ten per cent (10%) per annum on the above amount; and
 - (d) Two-thirds of the residue if only one child survives, one-half of the residue if more than one child, **or** all of the residue if there are no surviving children, issue or parents.
2.
 - (i) **The surviving children** get all of the remaining estate if there is no spouse; or
 - (ii) If the deceased leaves a surviving spouse, the children share the remaining estate equally after providing for the spouse as stated under (1) above.
3. **The surviving parent** or parents will inherit the entire estate if the deceased is not survived by a spouse, children or issue.

The Act makes provisions for other relatives who are eligible to inherit a person's estate if no spouse, children (or their issue) or parents survive the deceased. It also provides that if there are no surviving relatives the estate goes to the Crown (the Government).

Persons with a valid Will

A Testator (person who makes a Will) can determine who will inherit his/her estate by making a Will in keeping with the provisions of the Wills Act.

However, with the passing of the **Inheritance (Provision for Family and Dependents) Act** in 1993 certain eligible dependents may apply to the Court for an Order for reasonable financial provision or maintenance from the estate. The application would have to be made on the ground that they were excluded from the Will or that the provision for their maintenance under the Will was inadequate.

The category of dependents who are eligible to apply to the Court are a husband, wife (or common-law wife/husband) children and/or adopted children (with certain age limits), parents or former wife or husband who were being maintained by the deceased.

Joint Owners

The Title to property which is owned by the deceased and others passes automatically under the law on his death to the surviving owners. One should therefore be aware that the persons who are added to bank accounts, investment certificates, land titles etc are the persons who will inherit those assets if they survive the deceased.

Mrs. Enid F. Chin
48 Duke Street, Kingston.
Enid.Chin@dunncox.com